



August 26, 2002

Mr. G. M. Cox
Chief of Police
Corsicana Police Department
200 North 12th Street
Corsicana, Texas 75110

OR2002-4761

Dear Mr. Cox:

You have asked whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 170462.

The City of Corsicana ("city") received a request for information pertaining to a sexual assault. You assert that the requested information is excepted from disclosure based on sections 552.102 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that some of the records at issue are medical records, access to which is governed by the Medical Practice Act ("MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). The medical records must be released upon the patient's or legal guardian's signed, written consent, provided that the consent specifies (1)

the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. *See* Open Records Decision No. 565 (1990). We have marked the medical records contained in the submitted information that the city may release as provided under the MPA. *See* Open Records Decision No. 598 (1991).

As for the remaining submitted information, section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Generally, only the information which either identifies or tends to identify a victim of sexual assault or another sex-related offense may be withheld under common law privacy. However, in Open Records Decision No. 393 (1983) this office concluded that the governmental body was required to withhold an entire report in which such identifying information was inextricably linked with other releasable information. *See* Open Records Decision No. 393 (1983); Open Records Decision No. 339 (1982); *see also* Morales v. Ellen, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). You indicate that the requestor knows the victim's identity. Therefore, withholding only the identifying information from the requestor would not preserve the victim's common law right of privacy. This leads us to conclude that the entire offense report is excepted from disclosure pursuant to section 552.101.

We note, however, that a person or a person's authorized representative has a special right of access to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests. Gov't Code § 552.023. Therefore, if the city determines that the requestor is the authorized representative of the person to whom this information relates, then the city may not withhold the offense report under section 552.101. If the requestor is not this person's authorized representative, the city must withhold the report in its entirety under section 552.101 in conjunction with common law privacy.

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Assuming the city determines that the requestor is the authorized representative of the person to whom this information relates, the city nevertheless claims that the submitted offense report is excepted under section 552.108. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.” Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. Gov’t Code §§ 552.108(a)(1), (b)(1); 301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the requested offense report relates to a pending criminal investigation. Based upon this representation, we conclude that the release of the offense report would interfere with the detection, investigation, or prosecution of crime. Therefore, we agree that section 552.108(a)(1) is applicable.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Here, the complainant or reporting party is not the victim. Thus, with the exception of the basic offense and arrest information, the city may withhold the requested information from disclosure based on section 552.108(a)(1). We note that the city has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

To summarize, we conclude: (1) the medical records contained in the submitted information are governed by the Medical Practice Act and are releasable in accordance with its provisions; (2) if the requestor is not the authorized representative of the person to whom the submitted information relates, the submitted offense report must be withheld in its entirety under section 552.101 of the Government Code in conjunction with common law privacy; and (3) if the requestor is the authorized representative of the person to whom the submitted information relates, the submitted offense report may be withheld under section 552.108(a)(1), with the exception of the basic offense and arrest information, which must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

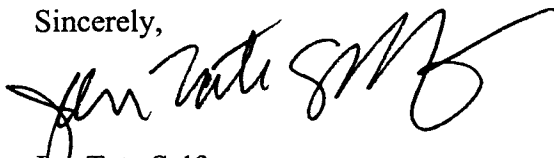
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, *no writ*).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Tate Self", written over a horizontal line.

Jon Tate Self
Assistant Attorney General
Open Records Division

JTS/seg

Ref: ID# 170462

Enc: Submitted documents

bc: requestor
(w/o enclosures)